

ELAINE MIKELS ET AL.

IBLA 79-284

Decided July 3, 1979

Appeal from a decision of the Medford District Office, Bureau of Land Management (BLM) dismissing appellants' protest of the Coyote Creek Timber Sale (Tract No. 79-38). Motion of appellants to reverse the action of BLM in receiving bids prior to adjudicating the protest and remand the case, and further motion for extension of time to file statement of reasons for appeal. Motion of Solicitor opposing reversal and/or remand.

Motion to reverse and remand denied; motion for extension granted.

1. Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal--Rules of Practice: Protests--Timber Sales and Disposals

The right of appeal to the Board is limited to parties to a case adversely affected by a decision of BLM. A person protesting a timber sale does not become a party to a case until such time as BLM has issued a final decision adverse to his or her interests. The case is ordinarily ripe for appeal only when an adverse decision is made on the protest.

2. Rules of Practice: Appeals: Effect of--Rules of Practice: Protests--Timber Sales and Disposals

The receipt of timber sale bids by BLM pursuant to an advertised sale and subsequent to the filing of a protest of the sale, does not constitute an irrevocable commitment to complete the sale where all bidders acknowledge that the final decision to award the

sale contract is contingent upon adjudication of the protest and the decision reached on any proper appeal therefrom. Hence, receipt of bids by BLM does not prejudice the rights of protestants to have their protest ruled upon and any proper appeal heard.

APPEARANCES: Elaine Mikels, pro se; Donald P. Lawton, Esq., Assistant Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

This case was initiated when Paula Miller, Elaine Mikels, and others filed a letter of protest, dated February 4, 1979, with the Medford District Office of BLM concerning the Coyote Creek Timber Sale (Tract No. 79-38). Subsequently a 'notice of appeal' dated February 20, 1979, was filed by Elaine Mikels and Sean J. Calhoun with BLM.

Bids were received for the subject tract in accordance with the sale prospectus on February 22, 1979. The bids were received by BLM subject to notification to all bidders, acknowledged in writing by the high bidder, that a protest had been filed regarding the sale and that the decision to award a sale contract would be delayed pending adjudication of the protest and any appeal therefrom.

This appeal is brought from the March 12, 1979, letter decision of the Acting District Manager, BLM, dismissing the protest and announcing the intention to award the sale contract to the high bidder subsequent to resolution of any appeal from the decision. The notice of appeal filed by Paula Miller, Elaine Mikels, and Sean J. Calhoun in response to the decision of BLM contains a motion requesting the Board to reverse the action of BLM in announcing the high bidder and to hold that a timber sale case is ripe for appeal when the sale is advertised.

A further motion has been made to extend the time for filing appellants' statement of reasons for appeal until the Board has ruled on the prior motions. In addition, Carl Wittman, who does not appear from the record to have been a party to the protests filed with BLM, has requested that a copy of the Environmental Assessment Report which is part of the record be provided to him or Elaine Mikels to facilitate preparation of appellants' statement of reasons.

Counsel for BLM has entered an appearance and opposed appellants' motion to delay the filing of appellants' statement of reasons until such time as the Board has decided whether BLM acted properly in receiving bids and ascertaining the high bidder prior to deciding appellants' protest. Counsel has urged that this separate issue be considered at the same time the protest of the timber sale is considered on the merits.

[1] The right of appeal is limited to a party to a case adversely affected by a decision of BLM. 43 CFR 4.410. Appellants were not parties to the timber sale decision until the time they filed their protests stating their objections to the sale and BLM ruled on the protests. Thus, the case was not ripe for appeal until BLM dismissed the protest by letter decision of March 12, 1979. See California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). 1/ BLM properly treated the submission of February 20, 1979, which purported to be a 'notice of appeal,' as another protest. See Duncan Miller (On Reconsideration), 39 IBLA 312 (1979).

[2] Therefore, the real issue presented by the motions of appellants and the Solicitor is the propriety of BLM action in receiving the bids after the protest was filed and prior to reaching a decision on the protest.

The actions of the Medford District Office totally comport with the purpose of the protest regulation. It is not designed to afford individuals who are unhappy with actions of BLM a multiplicity of remedies available at chronological increments. Rather, it is designed to allow expeditious and reasoned decisionmaking after the views of interested parties are considered. We expressly hold that it is proper in the context of a timber sale to receive bids after a protest has been filed, so long as no contract is actually awarded and there has been no irrevocable commitment to the sale of the timber. In this manner, the rights of the protestants, the bidders, and the Department are preserved. The protestants are afforded consideration of their protest and the grant of the right of appeal prior to a final decision. The bidders are able to ascertain their real interest in the tracts offered and the Department is able to consider matters raised by the protest and any subsequent appeal with finality in a single action. Appellants have no legitimate complaint as to this procedure.

In the present case, BLM has not made any irrevocable commitment to the timber sale subsequent to appellants' protest--the high bidder has expressly acknowledged that the completion of the sale is contingent upon the outcome of the protest and any proper appeal therefrom. Accordingly, appellants' motion to reverse the action of BLM and remand the case prior to resolution on the merits must be denied.

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1/ This does not dispense with the requirement of standing which is an essential element of the right to appeal from dismissal of a protest. See United States v. United States Pumice Company, 37 IBLA 153 (1978); Crooks Creek Commune, 10 IBLA 243 (1973). It does not necessarily follow that a party objecting to a course of action by BLM and filing a protest thereof pursuant to 43 CFR 4.450-2 is adversely affected by dismissal of the protest and thus has standing to appeal. See United States v. United States Pumice Company, *supra* at 158-59; Crooks Creek Commune, *supra*. Ruling is reserve on this question at the present time in the absence of appellants' statement of reasons.

A copy of the environmental assessment report prepared by BLM is being sent to Elaine Mikels, one of the appellants, pursuant to the request filed. This Board has been advised that the Office of the Solicitor, Portland Region, is further making a copy of the report available for inspection at the BLM District Office, Medford, Oregon. Therefore, appellants are given an extension of time to and including 21 days from the receipt of this decision to file their statement of reasons for appeal. Further requests for extensions of time will not be entertained save for the most compelling reason. A copy of the statement of reasons shall be served upon the Office of the Solicitor, Portland Region, at the address shown below. Therefore it is,

ORDERED,

1. That appellants' motion to reverse the action of BLM in receiving bids for the timber tract and remand the case is denied, and further,
2. That appellants are granted an extension of time to and including 21 days from receipt of this decision to file their statement of reasons for appeal, and further,
3. That appellants' statement of reasons must be served upon the Office of the Solicitor, Portland Region, Lloyd 500 Building, Suite 607, 500 NE., Multnomah Street, Portland, Oregon 97232, and proof of service filed with the Board pursuant to 43 CFR 4.401(c), and further,
4. That the Solicitor shall have 21 days from service of appellants' statement of reasons upon him in which to file and answer thereto.

James L. Burski  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Newton Frishberg  
Chief Administrative Judge

